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STATEMENT OF PATRICK M. CLAWSON CONCERNING HB-4064 and HB-4532  
MICHIGAN STATE SENATE JUDICIARY COMMITTEE  
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**HB-4064** and **HB-4532** will create a statutory framework for the operation of court document electronic filing systems in Michigan courts. The impact of these bills on the administration of justice in our state will be profound and felt literally for decades to come.

Using electronic filing and other Internet technology to improve court operations and streamline efficiency is worthy of public support. However, the current bills have serious shortcomings and are not in the public interest.

The substitute bills still provide Michigan courts with the authority to erect pay-walls to ***both file and inspect*** electronic court records. Although the substitute bills strip out any express funding language, they authorize the State Court Administrative Office to operate e-filing systems pursuant to policies and rules established by the Michigan Supreme Court. The court already has a pending rulemaking proceeding that would enshrine its ability to charge fees for the public to use these systems. Therefore, the substitute bills amount to nothing more than legislative sleight-of-hand to allow the Supreme Court to impose unconstitutional new taxes.

The Michigan Supreme Court would have the sole authority to set user fees – let's call them what they actually are, new taxes – for public use of the computer systems. And since the fees would be charged for the ***inspection*** of public records, it appears to be ***the creation of a new tax on the public's right to know about government***.

There is no requirement for the Supreme Court to hold public hearings or solicit public comment prior to imposing these taxes. There would be no oversight or review of these fees by the Legislature at any time.

The bills provide little oversight or public accountability for operation of these data systems and the money collected by court administrators. The bills are likely to provide an open-ended authorization for price-gouging by a cash-hungry judicial system.

About a dozen pilot e-filing systems are already operating in courts across Michigan pursuant to local court administrative orders that were rubber-stamped by the Michigan Supreme Court. ***There has never been a public hearing or solicitation of public comments by any of these courts prior to approving these orders.***

The pilot e-filing systems charge fees to file documents, as much as \$5-\$10 per document, a service that was previously free when filing paper documents. This money is split with private commercial vendors who operate the systems, but the details and percentages of the revenue splits have been kept secret by the courts. There are two principal vendors, TYLER TECHNOLOGIES of Dallas, TX and IMAGESOFT of Southfield, MI. ***There is no public accountability for the money generated by these systems at the present time, and the proposed bills do not require any such public disclosure. Further, the Michigan Supreme Court ruled in October 2012 that the administrative and financial records of state courts are closed to public inspection.***

At this time, the courts have refused to let self-represented litigants to use the pilot e-filing systems to file documents in their cases. Only attorneys are allowed access to file documents, thus placing *pro se*

litigants at a disadvantage in court proceedings. The pending legislation does not require the Michigan Supreme Court to open these systems to any non-attorneys.

The bills will block public access to court information by allowing the courts to create pay-walls that require citizens to pay to look-up basic court information, such as case records and hearing schedules. Many of the pilot e-filing systems and other local court data systems are charging outrageous fees for the public to search and access court records. For example:

- Ottawa County Circuit Court charges the public \$12.00 to search for a record – whether or not a record is found – and then another \$2.50 each to examine any records found.
- In Ingham County Circuit Court, the fee is \$11.00 per search and an additional \$2.50 per record viewed.
- In Marquette and Muskegon Counties, it's \$10 plus additional fees.
- The Circuit Courts of Kent and Livingston Counties charge \$6.00 per search plus \$2.50 for each case history or summary viewed.

An increasing number of courts in Michigan have removed - or do not have – public access terminals at the courthouses for citizens to search and inspect court records. This appears to be a move designed to raise revenues, since many courts are now charging as much as \$10 for their clerks to search records that were previously free for public access. In Grand Rapids and Port Huron, local District Courts now keep records on document imaging systems and do not provide any public access terminals for citizens to inspect court records. In Grand Rapids, a citizen must purchase an entire case file from the Clerk in order to inspect a single imaged document. Photocopying fees are also excessive - \$1.00 per page in most courts, \$2.00 per page in Washtenaw County.

Imposing fees for public access to court records is not in the public interest because it works against the economic and efficiency interests of Michigan courts. Free public electronic access to court information reduces the time and work demand on court clerks and other personnel to respond to requests from the public for docket information, hearing date schedules, etc. Allowing citizens to freely access basic court record information will help reduce expenditures for the courts and promote greater access to the justice system for the public, a true “win-win” situation for all.

The bills would eliminate many statutory record retention requirements in favor of letting the Michigan Supreme Court make its own rules on these matters.

The bills would allow the Michigan Supreme Court to establish policy as it sees fit on most electronic record access and filing rules. In a formal rulemaking action adopted in October 2012, the Court delegated great authority to the State Court Administrative Office to govern public access to court records access through internal court policies it publishes in a document known as the “*Michigan Trial Court Case File Management Standards*.” This policy document changes frequently. It is not subject to oversight from outside of the court bureaucracy. It is already being used to limit public access to court records, such as audio-video records of court hearings, by promulgating new policies that are based solely on bureaucratic whim and administrative fiat without any prior public comment or any formal public administrative hearings before the Michigan Supreme Court.

HB-4532 would also eliminate the requirement that Probate Courts keep alphabetical name indexes of their cases, thus making it impossible to retrieve and inspect case records by the names of parties. The only way to retrieve the records would be by using the specific number of the matter pending before the court. This would further cloak Probate Court records from public inspection and limit accountability of those courts to the public.

## PROPOSED AMENDMENTS

I submit that a framework and the guiding principles for amending these bills need to include the following precepts:

1. Court records are the property of the citizens of Michigan, not the government bureaucrats who act as the custodians of the public's property. Citizen input on the development and use of these electronic court record systems is essential and continuing legislative oversight of the money at issue is mandatory.
2. Taxpayers already pay for the collection and maintenance of this information for their benefit and the common good. They should not be required to pay twice to inspect or use their own property.
3. Any fees established to use these systems in any way should be the subject of public hearings prior to adoption and should be the subject of regularly scheduled periodic review.
4. Any funding mechanism must be constitutionally sound. The Judiciary must not be allowed any authority to levy new taxes on the public, because the taxing power in Michigan is reserved to the Legislature. The Legislature must not cede its taxing authority to the Judiciary, and it should establish any new taxes (or "fees") for court electronic filing systems by statute following public hearings and the signing of an authorizing bill by the Governor.
5. Alphabetical name indexes of all cases, including probate court cases, are mandatory public records to be kept by all courts.
6. All case indexes, registers of action, and formal judicial opinions issued by Michigan courts for all cases filed in Michigan courts should be available to the public via the Internet completely free of charge. This would be in a similar manner as how the Legislature freely provides information on its bills and legislative actions to the public through its website.
7. Each Michigan court should be required to provide public access terminals at the clerk's office so the public can retrieve and inspect court records without charge.
8. Changes to court record public access policies should be made only after public comment is solicited in advance and public administrative hearings are held by the Michigan Supreme Court. No changes through administrative fiat should be allowed in the **Michigan Trial Court Case File Management Standards** policy document.
9. A single statewide electronic filing system should be instituted, instead of a plethora of county-by-county systems administered at the local level as the pending legislation would permit.
10. The Michigan Judicial Data Warehouse should be opened immediately to free online public access. This data repository – created at public expense exceeding \$10 million - consists primarily of public record information including case indexes, registers of actions and court case records that are collected from local courts across the state. Many other states with similar systems (such as Missouri, Oklahoma, Washington, and New York) permit free public access to their court information. Why should Michigan citizens be barred from using a public record system that was created with their tax dollars?

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